

# **Outline of Contents**

## **FORM FILING**

### **MEDICAL MALPRACTICE**

#### **I. Availability of Coverage**

##### **A. MGL c.175, s.193U**

1. [Availability of Coverages / Non-Discrimination](#)
2. [Definition of Health Care Provider](#)
3. [Requirements to Offer Coverage for Health Care Specialties](#)
4. [Ceding of Policy](#)

#### **II. Medical Malpractice Form Filings (see [Casualty Forms](#) checklists)**

#### **III. Medical Malpractice Self-Insurance Trust Fund**

##### **A. MGL c.175F**

1. [section 2](#) Establishment of medical malpractice self-insurance trust fund; filing of trust instrument; certification; appointment of trustee; dissolution, voluntary or involuntary
  - i. [Who May Establish / Time of Establishment](#)
  - ii. [Filing of Trust Instrument](#)
  - iii. [Involuntary Dissolution](#)
2. [section 3](#) Application for certification; denial; approval
  - i. [Application for certification](#)
  - ii. [Reasons for Disapproval of Applications](#)
  - iii. [Time for Filing Hearing and Decision](#)
3. [section 6](#) Annual statement of financial condition; penalty for failure to file
4. [section 11](#) Exclusion of health care provider from participation; new participants; request for arbitration by aggrieved
5. [section 12](#) Trust instrument provisions

#### **IV. Medical Professional Mutual Insurance Company**

##### **A. [Chapter 330 of the Acts of 1994](#)**

#### **V. [Additional Filing Provisions](#)**

##### **I. Availability of Coverage**

**Chapter 175: Section 193U. Discrimination based on specialty practiced; risk classification; definitions**

**Availability of Coverages / Non-Discrimination**

\_\_\_\_\_ Every medical malpractice insurer shall make available to every health care provider every medical malpractice insurance coverage which it provides to any health care provider.

### **Definition of Health Care Provider**

“Health care provider” means any category of health care provider that was authorized to obtain medical malpractice insurance from the Joint Underwriting Association established by section 6 of chapter 362 of the acts of 1975, including but not limited to, a doctor of medicine, osteopathy, optometry, dental science, podiatry, chiropractic, or registered nurse licensed under the provisions of chapter 112, an intern, fellow or medical officer licensed under the provisions of section 9 of said chapter 112 or a licensed hospital, clinic, or nursing home, and its agents and employees, and any other category of health care provider as the commissioner of insurance may from time to time designate as eligible for being ceded to the medical malpractice reinsurance plan.

### **Requirements to Offer Coverage for Health Care Specialties**

\_\_\_\_\_ No medical malpractice insurer shall discriminate against any health care provider based upon the specialty practiced by health care providers within such category.

This section does not prohibit a medical malpractice insurer from establishing reasonable classifications of risks and premium charges based upon the relative risk associated with practice in a particular specialty.

If, after a hearing, the Commissioner determines that a medical malpractice insurer has discriminated against any health care provider in violation of this section, she shall take such action as is necessary to eliminate the effect of the discrimination and to prevent further violations.

This action can include, without limitation, the suspension or revocation of the medical malpractice insurer's license, admission, authorization or approval to write medical malpractice insurance on risks within the Commonwealth.

### **Ceding of Policy**

\_\_\_\_\_ Only medical malpractice insurers may cede any medical malpractice insurance policy issued to a health care provider to the Massachusetts medical malpractice reinsurance plan.

## **II. Medical Malpractice Form Filings (see Casualty checklist)**

## **III. Medical Malpractice Self-Insurance Trust Fund MGL c.175F**

**Chapter 175F: Section 2: Establishment of medical malpractice self-insurance trust fund; filing of trust instrument; certification; appointment of trustee; dissolution, voluntary or involuntary**

### **Who May Establish / Time of Establishment**

A group of two or more participating health care providers may establish a health care provider self-insurance trust fund under this chapter prior to the issuance of a certificate in accordance with section 3.

Said fund shall be deemed established upon the execution of a trust instrument by the initial participants and establishment of a fund balance.

### **Filing of Trust Instrument**

\_\_\_\_\_ When a group of participants has established a fund, said participants shall file the trust instrument with the Commissioner with such supporting documentation as he might reasonably require by regulation. Such trust instrument shall be in compliance with the provisions of this chapter.

The coverage provisions of an insurance contract issued by a fund under its trust instrument shall not become effective to provide coverage until the fund is certified in accordance with section three although the fund may require and accept payments of premiums prior to certification.

### **Involuntary Dissolution**

\_\_\_\_\_ A fund shall appoint a trustee to satisfy reasonable standards of performance, which shall be promulgated by the Commissioner by regulation.

The Commissioner may petition the supreme judicial court for the involuntary dissolution of any medical malpractice self-insurance trust fund if such fund has not filed for 2 consecutive years, an annual statement in accordance with section 6, or if the Commissioner is satisfied that the fund is inactive and its continued existence is not in the public interest.

### **Chapter 175F: Section 3. Application for certification; denial; approval**

Any fund established under chapter 175F, section 2 may be certified to provide insurance in accordance with the provisions of this chapter upon filing an application for certification with the Commissioner.

Such application shall be on a form provided by the Commissioner and shall include such information, as she shall require by regulation.

### **Reasons for Disapproval of Applications**

The Commissioner shall review each application and may, after a hearing in accordance with MGL c. 30A, deny any application for the following reasons:

- (a) that the application is not on the prescribed form or the information as submitted is not in compliance with regulations promulgated under the provisions of section 17;

- (b) that the dollar reserve is not in compliance with section 8;
- (c) that the trustee is found by the Commissioner to be unable to satisfy the standards of performance promulgated by the Commissioner pursuant to section 2; or
- (d) that there was fraud or willful misrepresentation in providing required written information.

#### **Time for Filing Hearing and Decision**

Within 60 days of the date of filing of an application under this section an application shall be deemed approved, unless the Commissioner shall schedule a hearing in accordance with MGL c. 30A to consider denial thereof and shall hold such hearing within 30 days of such scheduling.

The decision of the Commissioner shall be rendered within 30 days following such hearing, or the application so filed will be deemed approved.

#### **Chapter 175F: Section 6. Annual statement of financial condition; penalty for failure to file**

A fund shall annually on January 1<sup>st</sup> file with the Commissioner a statement showing its financial condition as of September 30<sup>th</sup> of the prior year.

Such statement shall be on a form provided by the Commissioner.

The Commissioner may require in writing, at any time, such additional information as is reasonable and necessary to determine the financial condition of a fund.

A fund unreasonably neglecting to file the statement required hereunder in a timely fashion, or unreasonably neglecting to comply with any such informational request by the Commissioner within 30 days following receipt of a written request for said information, shall forfeit \$100 for each day which such unreasonable neglect continues. Such fine shall be imposed only after a hearing in accordance with MGL c. 30A, conducted by the Commissioner.

The Commissioner shall have the power to examine the financial condition of a fund.

#### **Chapter 175F: Section 11. Exclusion of health care provider from participation; new participants; request for arbitration by aggrieved**

\_\_\_\_\_ No fund shall exclude a health care provider from participation except as provided in this section if the health care provider has complied with all necessary and required application procedures.

A fund may exclude a health care provider from participation if:

- \_\_\_\_\_ (1) the applicant health care provider is not situated in a geographical location which is reasonably contiguous to the initial participants;

- \_\_\_\_\_ (2) the applicant health care provider does not meet standards of risk and claims management and financial management promulgated by a fund in its trust instrument;
- \_\_\_\_\_ (3) the applicant is not a nonprofit health care provider, if that fund's present participants are nonprofit; or
- \_\_\_\_\_ (4) the applicant is not a member of the classification of health care providers to which the fund's present participants belong. Each type of health care provider set forth in section 1 shall be considered to be a separate classification of health care providers.

**175F: Section 12: Trust instrument provisions**

The trust instrument may provide:

- \_\_\_\_\_ (a) that there shall be a minimum period during which any participant must participate in the fund;
- \_\_\_\_\_ (b) that the fund may provide tail coverage to any participant which joins or withdraws from the fund;
- \_\_\_\_\_ (c) that all participants shall execute a participation agreement;
- \_\_\_\_\_ (d) that the trustee shall be free of all personal liability for his actions in good faith on behalf of the fund; and
- \_\_\_\_\_ (e) that the trustee may be either an individual or an institution such as a bank, an insurance company or any other appropriate entity.

**IV. MEDICAL PROFESSIONAL MUTUAL INSURANCE COMPANY C. 330 OF THE ACTS OF 1994**

The medical professional mutual insurance company, established by Chapter 330 of the Acts of 1994, is not authorized to issue policies of insurance to doctors of optometry, podiatry or chiropractic, registered nurses licensed under the provisions of Chapter 112 of the General Laws or licensed nursing homes, its agents and employees.

The medical professional mutual insurance company is authorized to issue non-assessable policies.

The medical professional mutual insurance company shall be subject to the provisions of Chapter 175A of the General Laws to the extent that those provisions otherwise apply to a mutual company incorporated in the Commonwealth. It shall not be subject to the provisions of Chapter 175, sections 73, 90A, 92, 93A and 93B of the General Laws insofar as they relate to either subscriptions for insurance or securing initial applications for insurance.

The medical professional mutual insurance company shall offer medical malpractice insurance on both a claims made and occurrence basis to health care providers so that health care providers may select either form of insurance at their option.

**V. Additional Filing Provisions**

**Unfair and Deceptive Trade Practices:**

\_\_\_\_\_ Any filing not in compliance with the above referenced requirements may be deemed to be in violation of the provisions of Chapter 176D of the Massachusetts General Laws. We hereby certify that the provisions set forth in this filing do not entail any intentional unfair and deceptive trade practices. Furthermore, we understand that we are subject to the penalties associated with practices that are in clear violation of this statute.